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IMLI

LEGISLATION DRAFTING PROJECT

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A Subsidiary Legislation incorporating the International Convention for the Control and Management of Ships' Ballast Water and Sediments 2004, into Maltese Law.

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To My Parents

The completion of this project would not have been possible were it not for the invaluable guidance and constant advice given to me by my Supervisor, Dr. Ivan Vella. To him I am most grateful.

This is to certify that the work and research in this project is my own personal work.

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1. GENERAL INTRODUCTION

The Mediterranean Sea is an area of great economic and cultural heritage. It covers an area of approximately 2.5 million square kilometers stretching 3,800 km from east to west and as much as 900 kilometers from north to south. The great physical diversity of the Mediterranean is partly reflected in the great number of smaller seas that it contains, including the Adriatic Sea, the Aegean Sea, the Balearic Sea, the Ionian Sea, the Ligurian Sea, and the Tyrrhenian Sea. The Mediterranean was said to be a *superhighway* of transport in ancient times, allowing for trade and cultural exchange between emergent peoples of the region. Needless to say, Malta, with the blessing of its stategic position, the genuine and incessant efforts of the Maltese legislator in keeping up with the advances of trade and development, together with the timely executive decisions that Governments have wisely taken over the years, has from the earliest times and throughout the years registered a tremendous role in the maximization of wealth in the Mediterranean.

This in turn has resulted firstly in an incredible increase of sea-going vessels registered under the Maltese Flag and, what is even closer home and perhaps more perturbing, is the tremendous increase in the influx of sea-going vessels that enter the Maltese coastal waters. No doubt this is a development which is highly beneficial to the Nation and certainly one which the Maltese Government intends to continue to pursue. What is however intriguing, is that throughout the years, none of the European Countries individually and more importantly collectively,[1] took any measures to address that which has been identified as one of the four greatest threats to the world's oceans. The inititiave of the current author is primarily that of proposing the implementation of the Ballast Water Convention 2004. The latter would certainly be a milestone in the quest for the protection of the Maltese marine

[1] This is without prejudice to Directive (2004/35/CE) on Environmental Liability and Directive (2005/35/EC of 7 September 2005) and a complementary framework decision (2005/667/JHA of 12 July 2005) adopted and published in the Official Journal on 30 September 2005, which Member States will have to implement the two texts by April 2007. These legislative instruments do not address directly issues relating to Ballast Water but with the discharge of polluting substances, namely oil and chemicals.

environment and could also act as a catalyst for other European States and perhaps for the European Union as a whole to work towards the progessive development of the international legal framework for safe, secure, efficient and environmentally sound shipping. The author acknowledges the magnitude of the matter that the present Convention endeavours to regulate and is aware of the inefficacy of piece-meal legislative solutions. The initiative on the part of the Maltese Government, to ratify this Convention remains however a very commendable and significant step towards the reduction of the problem. Whether this Convention would reach its benevolent ends largely depends on the number of States that ratify it. With the benefit of hindsight, it is perhaps evident that many a times the economic considerations override many of the initiatives to protect the environment with obvious eventual back-fires. The growing awareness on the protection of the environment on the part of the international community is however encouraging.

2. THE BASIS FOR LEGISLATION

Trans-frontier pollution can be defined as any form of pollution that emanates from the territory of one State and causes or threatens to cause damage to the territory of another State. Thus a discharge of a noxious substance from a pipeline within the territory of one State that is carried by the ocean currents into the territory of another to the detriment of tourism or other interests in the affected State would constitute trans-frontier pollution and in the absence of treaty provisions between the two States covering compensation for such incident would fall to be dealt with under the rules of customary international law.[2] A better example of trans-frontier pollution could in fact be the introduction of invasive marine species into new environments by ships' ballast water, attached to ships' hulls and via other vectors. The basic principles of customary international law concerning trans-frontier pollution were recognized in the *Trial Smelter Arbitration.*[3] This case concerned a dispute between the United States and Canada arising from damage done to the United States by sulphur dioxide fumes from a smelting plant in Canada. The international tribunal that dealt with the

[2] J. Bates & C. Benson *Marine Environmental Law*, Lloyds' of London Press Ltd. 1993, 1.01-1.10
[3] *Trial Smelter Arbitration* (1938) and (1941) 3 U.N.R.I.A.A

case held that a State at all times owes a duty to protect other States against injurious acts by individuals within its jurisdiction considering that:

> Under the principles of International Law no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory or to the property of persons therein, when the case is of serious consequences and the injury is established by clear and convincing evidence.[4]

This basic principle which is in effect one of the two principal basis upon which implementation of the Ballast Water Convention into Maltese Law is being advanced, has been reinforced at the 1972 Conference on the Human Environment at Stockholm which adopted a 'Declaration on the Human Environment'. Principle 21 of this declaration provides that:

> States have in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies and the responsibility to ensure that activities within the jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction.

Similarly in the *Corfu Channel* case,[5] the World Court held that every State has an obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States. No doubt the word 'territory' in the above captioned judgment referred to the Albanian territorial seas. By no large stretch of imagination however, the 'territory' of a State could be said to include the fleet that it has registered under is national flag. In practice the backbone of the courts' dicta over the years suggests that no State should abuse of any right which has been accorded to it by International Law. Certainly under the 1982 Convention on the Law of the Sea as a reflection also of customary international law, one of the most sacrosanct rights of every State, whether coastal or land locked, is the right to navigation.[6] A vessel navigating the High Seas is in actual fact exercising a right which is accorded to the State that has ascribed it with nationality. *Qui facit per alia facit per se* and therefore a vessel that avails itself abusively of any right accorded to it, would in actual fact be exposing the

[4] ibid. p.1905
[5] [1949] ICJ Rep.4
[6] Article 90 United Nations Convention on the Law of the Sea 1982

State with which it is registered, to responsibility which in this area is limited to marine environmental damage. Considering the size of the Maltese registry, the influence that ship-owning companies could have on national policy making, and the restrictions that the Convention attempts to impose, it could be said that such a Convention is not one which would attract the immediate support of the major stake holders. However international law duties as highlighted in the previous paragraphs and the ever-growing tendency of these duties to be regarded as obligations *erga omnes*, together with the protective principle as an ever-growing basis for international legislation which shall be dealt with in the following paragraphs, make such a Convention one of the many remaining steps towards the community's quest for safer seas and cleaner oceans.

The precautionary principle evolved from the recognition that scientific certainty often comes too late to design effective legal and policy responses for preventing potential environmental threats. Most environmental issues involve complex analysis of scientific, technical and economic factors. Rarely do the law-makers have perfect scientific knowledge when they are asked to make decisions whether to respond to a specific threat. In essence the precautionary principle switches the burden of scientific proof necessary for triggering policy responses from those who support prohibiting or reducing a potentially offending activity to those who want to continue the activity. Such a shift in the burden of proof could shorten the time period between when a potential threat to the environment is identified and when a legal response can be developed. The precautionary principle is one of the most important principles for anticipating and avoiding environmental damage before it occurs and thus it can lower the overall costs for mitigating or adapting to environmental damage.[7] The Ballast Water Convention is here to stay but needless to say the methods used in the attainment of its objective will develop as time goes by and technology progresses. Certainly the Convention offers a good start both in terms of a basic structure of rules and more importantly of getting the Sates thinking in terms

[7] D.Hunter, J. Salzman, D. Zaelke, *International Environmental Law and Policy,* New York Press Foundation 1998, p.360

of international rules that pave the way for the future regulation of such a growing issue.

3. THE PROBLEM EXPOSED

The introduction of invasive marine species into new environments by ships' ballast water attached to ships' hulls and via other vectors has been identified as one of the four greatest threats to the world's oceans. The other three are land-based sources of marine pollution, over-exploitation of living marine resources and physical alteration of the marine habitat. Shipping moves over 80% of the world's commodities and transfers approximately 3 to 5 billion tonnes of ballast water internationally each year.[8] A similar volume may also be transferred domestically within countries and regions each year. Ballast water is absolutely essential to the safe and efficient operation of modern shipping, providing balance and stability to un-laden ships. However, it may also pose a serious ecological, economic and health threat. Ships have carried solid ballast, in the form of rocks, sand or metal, for thousands of years. In modern times, ships use water as ballast.

Certainly water is much easier to load on and off a ship, and is therefore more efficient and economical than solid ballast. The convenience lies in the ease with which the ship could manage its balance. When un-laden it would let in water into the ballast tanks, and discharge when it loads cargo and becomes laden. A potentially serious environmental problem arises when this ballast water contains marine life. There are thousands of marine species that may be carried in ships' ballast water. These include bacteria and other microbes, small invertebrates and the eggs, cysts and larvae of various species. The problem is compounded by the fact that virtually all marine species have life cycles that include a planktonic stage or stages. Even species in which the adults are unlikely to be taken on in ballast water, for example because they are too large or live attached to the seabed, may be transferred in ballast during their planktonic phase.[9]

[8] http://globallast.imo.org
[9] ibid.

Over the past millennia, marine species have dispersed throughout the oceans by natural means, carried on currents and attached to floating logs and debris. Natural barriers, such as temperature and land masses, have prevented many species from dispersing into certain areas. This has resulted in the natural patterns of biogeography observed in the oceans today. In particular, the pan-global tropical zone has separated the northern and southern temperate and cold water zones. This has allowed many species to evolve quite independently in these latter zones, resulting in quite different marine biodiversity between the north and the south.

In tropical areas species have not faced the same barriers. This is exemplified by the relatively homogenous marine biodiversity spanning the huge area of the Indo-Pacific, from the east coast of Africa to the west coast of South America. Humans have of course abetted this process for as long as they have sailed, mainly by dispersing marine species that have attached to the hulls of vessels. The commencement of the use of water as ballast, and the development of larger, faster ships completing their voyages in ever shorter times, combined with rapidly increasing world trade, means that the natural barriers to the dispersal of species across the oceans are being reduced. In particular, ships provide a way for temperate marine species to pierce the tropical zones, and some of the most spectacular introductions have involved northern temperate species invading southern temperate waters, and vice versa. It is estimated that at least 7,000 different species are being carried in ships' ballast tanks around the world. The vast majority of marine species carried in ballast water do not survive the journey, as the ballasting and deballasting cycle and the environment inside ballast tanks can be quite hostile to organism survival. Even for those that do survive a voyage and are discharged, the chances of surviving in the new environmental conditions, including predation and competition from native species, are further reduced.[10]

However, when all factors are favourable, an introduced species may survive and manage to establish a reproductive population in the host environment. It may even become invasive, out-competing native species and multiplying into pest

[10] http://globallast.imo.org

proportions. As a result, whole ecosystems are being changed. In the United States, the European zebra mussel dreissena polymorpha has infested over 40% of internal waterways and may have required between US$750 million and US$1 billion in expenditure on control measures between 1989 and 2000. In southern Australia, the Asian kelp undaria pinnatifida is invading new areas rapidly, displacing the native seabed communities. In the Black Sea, the filter-feeding North American jellyfish mnemiopsis leidyi has on occasion reached densities of 1kg of biomass per meter squared. It has depleted native plankton stocks to such an extent that it has contributed to the collapse of entire Black Sea commercial fisheries. In several countries, introduced, microscopic, red-tide algae (toxic dinoflagellates) have been absorbed by filter-feeding shellfish, such as oysters.[11] When eaten by humans, these contaminated shellfish can cause paralysis and even death. The list goes on, hundreds of examples of major ecological, economic and human health impacts across the globe. It is even feared that diseases such as cholera might be able to be transported in ballast water. There are hundreds of other examples of catastrophic introductions around the world, causing severe human health, economic and ecological impacts in their host environments. The introduction of invasive marine species is one of the most immanent threats to the world's oceans with the major difference that whilst other forms of marine pollution, such as oil spills, can be remedied by ameliorative action, the impact of invasive marine species are most likely irreversible.

4. THE INTERNATIONAL RESPONSE

In response to the threats posed by invasive marine species, the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro in 1992, in its Agenda 21 called on the International Maritime Organization (IMO) and other international bodies to take action to address the transfer of harmful organisms by ships. As a specialized agency of the United Nations responsible for the international regulation of ship safety and the prevention of marine pollution, IMO is the most appropriate body to address this issue. By 1992 it had already been active in ballast water issues for over ten years. The World Summit on Sustainable

[11] ibid.

Development (hereinafter referred to as the WSSD) took place in Johannesburg, South Africa, from 26 August to 4 September 2002. The WSSD re-affirmed its commitment to Agenda 21 and in its Plan of Implementation the WSSD called for acceleration of the development of measures to address invasive species in ballast water and urged IMO to finalize the IMO Ballast Water Convention. The member countries of IMO have developed 'Guidelines for the control and management of ships' ballast water, to minimise the transfer of harmful aquatic organisms and pathogens'.[12] They replace earlier, less comprehensive Guidelines adopted in 1993. Management and control measures recommended by the Guidelines include:

- Minimising the uptake of organisms during ballasting, by avoiding areas in ports where populations of harmful organisms are known to occur, in shallow water and in darkness, when bottom-dwelling organisms may rise in the water column.
- Cleaning ballast tanks and removing muds and sediments that accumulates in these tanks on a regular basis, which may harbour harmful organisms.
- Avoiding unnecessary discharge of ballast.
- Undertaking ballast water management procedures, including:

    1. Exchanging ballast water at sea, replacing it with 'clean' open ocean water. Any marine species taken on at the source port are less likely to survive in the open ocean, where environmental conditions are different from coastal and port waters.
    2. Non-release or minimal release of ballast water.
    3. Discharge to onshore reception and treatment facilities.

The shipping industry has also been very active in helping to address invasive marine species and participates actively in the IMO Marine Environment Protection Committee Ballast Water Working Group. In particular, the International Chamber of Shipping (ICS) and the International Association of Independent Tanker Owners (INTERTANKO) and Classification Societies have published Model Ballast Water Management Plans. They give practical guidance for the implementation of the IMO Guidelines on-board ships.

[12] These Guidelines were adopted by the IMO Assembly in 1997, by resolution A.868(20)

All of the approaches recommended under the IMO Guidelines are subject to limitations. Reballasting at sea currently provides the best-available risk minimisation measure, but is subject to serious ship-safety limits. Even when it is able to be fully implemented, this technique is less than 100% effective in removing organisms from ballast water. In recognition of the limitations of the A.868(20) Guidelines, the current lack of a totally effective solution and the serious threats still posed by invasive marine species, IMO member countries also agreed to develop a mandatory international legal regime to regulate and control ballast water. This culminated in adoption of the International Convention for the Control and Management of Ships Ballast Water and Sediments in February 2004.

5. TREATMENT TECHNOLOGY

Some parties even suggest that reballasting at sea may itself contribute to the wider dispersal of harmful species, and that Island States located 'down-stream' of mid-ocean reballasting areas may be at particular risk from this practice. It is therefore extremely important that alternative, effective ballast water management and treatment methods are developed as soon as possible, to replace reballasting at sea. Significant research and development (R&D) efforts are underway by a number of scientific and engineering research establishments around the world, aimed at developing a more complete solution to this problem.

Options being considered include:

- Mechanical treatment methods such as filtration and separation.
- Physical treatment methods such as sterilisation by ozone, ultra-violet light, electric currents and heat treatment.
- Chemical treatment methods such adding biocides to ballast water to kill organisms.
- Various combinations of the above.

All of these possibilities currently require significant further research effort. Major barriers still exist in scaling these various technologies up to deal effectively with the huge quantities of ballast water carried by large ships (e.g. about 60,000 tonnes of ballast water on a 200,000 DWT bulk carrier). Treatment options must not interfere

unduly with the safe and economical operation of the ship and must consider ship design limitations. Any control measure that is developed must meet a number of criteria, including:

- It must be safe.
- It must be environmentally acceptable.
- It must be cost-effective.
- It must work.

One of the problems currently faced by the global R&D community is that apart from the general criteria above, there are currently no internationally agreed and approved performance standards or evaluation system for the formal acceptance of any new techniques that are developed. In addition, many groups are working in isolation from each other, and there are no formal mechanisms in place to ensure effective lines of communication between the R&D community, governments and ship designers, builders and owners. These are vital if the R&D effort is to succeed.

The International Convention for the Control and Management of Ships Ballast Water & Sediments was adopted by consensus at a Diplomatic Conference at IMO in London on Friday 13 February 2004. The Conference was attended by representatives of 74 States, one Associate Member of IMO, observers from two intergovernmental organizations and 18 non-governmental international organizations.

The Convention is divided into Articles and contains an Annex which includes technical standards and requirements in the Regulations for the control and management of ships' ballast water and sediments. It will enter into force 12 months after ratification by 30 States, representing 35 per cent of world merchant shipping tonnage.[13]

[13] The International Convention for the Control and Management of Ships Ballast Water & Sediments 2004 Article 18

6. THE MAIN FEATURES OF THE CONVENTION

6.1 GENERAL OBLIGATIONS

Parties undertake to give full and complete effect to the provisions of the Convention and the Annex in order to prevent, minimize and ultimately eliminate the transfer of harmful aquatic organisms and pathogens through the control and management of ships' ballast water and sediments.[14] Parties are given the right to take, individually or jointly with other parties, more stringent measures with respect to the prevention, reduction or elimination of the transfer of harmful aquatic organisms and pathogens through the control and management of ships' ballast water and sediments, consistent with international law. Parties should ensure that ballast water management practices do not cause greater harm than they prevent to their environment, human health, property or resources, or those of other States.

6.2 RECEPTION FACILITIES

Parties undertake to ensure that ports and terminals where cleaning or repair of ballast tanks occurs, have adequate reception facilities for the reception of sediments.[15]

6.3 RESEARCH AND MONITORING

The Convention[16] calls for Parties individually or jointly to promote and facilitate scientific and technical research on ballast water management; and monitor the effects of ballast water management in waters under their jurisdiction.

6.4 SURVEY, CERTIFICATION AND INSPECTION

Ships are required to be surveyed and certified[17] and may be inspected by port state control officers[18] who can verify that the ship has a valid certificate, inspect the

[14] ibid. Article 2
[15] ibid. Article 5
[16] The International Convention for the Control and Management of Ships Ballast Water & Sediments 2004 Article 6
[17] ibid. Article 7
[18] ibid. Article 9

Ballast Water Record Book, and sample the ballast water. If there are concerns, then a detailed inspection may be carried out and 'the Party carrying out the inspection shall take such steps as will ensure that the ship shall not discharge Ballast Water until it can do so without presenting a threat of harm to the environment, human health, property or resources.' All possible efforts shall be made to avoid a ship being unduly detained or delayed.[19]

6.5 TECHNICAL ASSISTANCE

Parties undertake, directly or through the Organization and other international bodies, as appropriate, in respect of the control and management of ships' ballast water and sediments, to provide support for those Parties which request technical assistance to train personnel; to ensure the availability of relevant technology, equipment and facilities; to initiate joint research and development programmes; and to undertake other action aimed at the effective implementation of this Convention and of guidance developed by the Organization related thereto.[20]

6.6 ANNEX A – GENERAL PROVISIONS

This includes definitions, application and exemptions. Under Regulation A-2 General Applicability: 'Except where expressly provided otherwise, the discharge of Ballast Water shall only be conducted through Ballast Water Management, in accordance with the provisions of this Annex.'

6.7 ANNEX B – MANAGEMENT AND CONTROL REQUIREMENTS FOR SHIPS

Ships are required to have on board and implement a Ballast Water Management Plan approved by the Administration.[21] The Ballast Water Management Plan is specific to each ship and includes a detailed description of the actions to be taken to implement the Ballast Water Management requirements and supplemental Ballast Water Management practices. Ships must have a Ballast Water Record Book[22] to

[19] ibid. Article 12
[20] ibid. Article 13
[21] Regulation B-1
[22] Regulation B-2

record when ballast water is taken on board; circulated or treated for Ballast Water Management purposes; and discharged into the sea. It should also record when Ballast Water is discharged to a reception facility and accidental or other exceptional discharges of Ballast Water

Specific requirements for ballast water management are contained in regulation B-3:

- Ships constructed before 2009 with a ballast water capacity of between 1500 and 5000 cubic metres must conduct ballast water management that at least meets the ballast water exchange standards or the ballast water performance standards until 2014, after which time it shall at least meet the ballast water performance standard.
- Ships constructed before 2009 with a ballast water capacity of less than 1500 or greater than 5000 cubic metres must conduct ballast water management that at least meets the ballast water exchange standards or the ballast water performance standards until 2016, after which time it shall at least meet the ballast water performance standard.
- Ships constructed in or after 2009 with a ballast water capacity of less than 5000 cubic metres must conduct ballast water management that at least meets the ballast water performance standard.
- Ships constructed in or after 2009 but before 2012, with a ballast water capacity of 5000 cubic metres or more shall conduct ballast water management that at least meets the ballast water performance standard.
- Ships constructed in or after 2012, with a ballast water capacity of 5000 cubic metres or more shall conduct ballast water management that at least meets the ballast water performance standard.

Other methods of ballast water management may also be accepted as alternatives to the ballast water exchange standard and ballast water performance standard, provided that such methods ensure at least the same level of protection to the environment, human health, property or resources, and are approved in principle by IMO Marine Environment Protection Committee.[23]

Under Regulation B-4 all ships using ballast water exchange should:

- Whenever possible, conduct ballast water exchange at least 200 nautical miles from the nearest land and in water at least 200 metres in depth, taking into account Guidelines developed by IMO;
- In cases where the ship is unable to conduct ballast water exchange as above, this should be as far from the nearest land as possible, and in

[23] http://globallast.imo.org

all cases at least 50 nautical miles from the nearest land and in water at least 200 metres in depth.

When these requirements cannot be met areas may be designated where ships can conduct ballast water exchange. All ships shall remove and dispose of sediments from spaces designated to carry ballast water in accordance with the provisions of the ships' ballast water management plan.[24]

6.8 ANNEX C – ADDITIONAL MEASURES

A Party, individually or jointly with other Parties, may impose on ships additional measures to prevent, reduce, or eliminate the transfer of Harmful Aquatic Organisms and Pathogens through ships' Ballast Water and Sediments. In these cases, the Party or Parties should consult with adjoining or nearby States that may be affected by such standards or requirements and should communicate their intention to establish additional measures to the Organization at least 6 months, except in emergency or epidemic situations, prior to the projected date of implementation of the measures. When appropriate, Parties will have to obtain the approval of IMO.

6.9 ANNEX D – STANDARDS FOR BALLAST WATER MANAGEMENT

There is a ballast water exchange standard and a ballast water performance standard. Ballast water exchange could be used to meet the performance standard:

Ships performing Ballast Water exchange shall do so with an efficiency of 95 per cent volumetric exchange of Ballast Water.[25] For ships exchanging ballast water by the pumping-through method, pumping through three times the volume of each ballast water tank shall be considered to meet the standard described. Pumping through less than three times the volume may be accepted provided the ship can demonstrate that at least 95 percent volumetric exchange is met.

Ships conducting ballast water management shall discharge less than 10 viable organisms per cubic meter greater than or equal to 50 micrometers in minimum dimension and less than 10 viable organisms per milliliter less than 50 micrometres

[24] Regulation B-4
[25] Regulation D-1

in minimum dimension and greater than or equal to 10 micrometers in minimum dimension; and discharge of the indicator microbes shall not exceed the specified concentrations.[26]

The indicator microbes, as a human health standard, include, but are not be limited to:

a. Toxicogenic Vibrio cholerae (O1 and O139) with less than 1 colony forming unit (cfu) per 100 milliliters or less than 1 cfu per 1 gram (wet weight) zooplankton samples;
b. Escherichia coli less than 250 cfu per 100 milliliters;
c. Intestinal Enterococci less than 100 cfu per 100 milliliters.

Ballast Water Management systems must be approved by the Administration in accordance with IMO Guidelines.[27] These include systems which make use of chemicals or biocides; make use of organisms or biological mechanisms; or which alter the chemical or physical characteristics of the Ballast Water.

6.10 PROTOTYPE TECHNOLOGIES

Regulation D-4 covers Prototype Ballast Water Treatment Technologies. It allows for ships participating in a programme approved by the Administration to test and evaluate promising Ballast Water treatment technologies to have a leeway of five years before having to comply with the requirements.

6.11 REVIEW FOR STANDARDS

The IMO is required to review the Ballast Water Performance Standard, taking into account a number of criteria including safety considerations; environmental acceptability, i.e., not causing more or greater environmental impacts than it solves; practicability, i.e., compatibility with ship design and operations; cost effectiveness; and biological effectiveness in terms of removing, or otherwise rendering inactive

[26] Regulation D-2
[27] Regulation D-3

harmful aquatic organisms and pathogens in ballast water.[28] The review should include a determination of whether appropriate technologies are available to achieve the standard, an assessment of the above mentioned criteria, and an assessment of the socio-economic effects specifically in relation to the developmental needs of developing countries, particularly Small Island developing States.

6.12 ANNEX E – SURVEY AND CERTIFICATION REQUIREMENTS FOR BALLAST WATER MANAGEMENT

Gives requirements for initial renewal, annual, intermediate and renewal surveys and certification requirements. Appendices give form of Ballast Water Management Certificate and Form of Ballast Water Record Book.

7. PROPOSED IMPLEMENTATION

Since the Maltese legal corpus is practically devoid of any instruments regulating this matter, the author has decided to provide a new law in the form of secondary legislation allowing greater flexibility in amendment procedures. This enabling instrument will primarily allow the Maltese Parliament to ratify the Ballast Water Convention 2004. Secondly and due to the fact that Malta is a dualist country, and that no provision of a treaty shall become, or be enforceable as part of the law of Malta except by or under an Act of Parliament,[29] this Legal Notice will give the force of law to the selected and annexed provisions of the same Convention. This Legal Notice is an instrument made under the general Merchant Shipping Act which is a mother Act providing for most of the maritime-related instruments in the form of Legal Notices. Despite an ardent lack of consensus as to which of the various Maltese authorities would be in a better position to enforce the relevant provisions of this Convention, the administrative Authority vested with enforcement of the Convention shall be the Malta Maritime Authority and this due to the fact that this Authority has in place the necessary enforcement mechanisms which it already operates in the fulfillment of its duties arising from various other international conventions such as *inter alia,* STCW, MARPOL and SOLAS. It is only logical to

[28] Regulation D-5
[29] ibid. Article 3(3)

entrust the enforcement of this Convention to this Authority which could use its existing set-up and improve upon it. Needless to say the Authority would need to instruct further its inspecting officers and ensure that they are fully conversant with the dictates of this international instrument. Furthermore, this proposal is being advocated on the fact that this Authority has under its control an existing port-reception facility which could be adapted to the serve the needs of the current legislative instrument. The Legal Notice is drafted in a manner which takes into account the fact that the most of the technical procedures in the Convention will be modified in due time as scientific research produces more satisfactory results. It in fact allows for the progressive amendments to become part and parcel of the present Legal Notice without the need of an ulterior enactment.

SUBSIDIARY LEGISLATION 234.50

MERCHANT SHIPPING (BALLAST WATER) REGULATIONS, 2006

__ January, 2007

LEGAL NOTICE __ of 2007

IN exercise of the powers conferred by Articles 374 and 375 of the Merchant Shipping Act, the Minister for Transport and Communications in consultation with the Malta Environment and Planning Authority and in concurrence with the Prime Minister and Minister of Finance has made the following regulations:

PART 1
General

Citation

1. The title of these Regulations is the Merchant Shipping (Ballast Water) Regulations.

Commencement

2. These Regulations shall come into effect on such date as the Minister may by notice in the Government Gazette, appoint and different dates may be so appointed for different provisions and different purposes of these Regulations.

Interpretation

3. (1) In these regulations and in the annexed schedule which forms an integral part of these regulations, unless the context otherwise requires -

Cap. 234

"Act " means the Merchant Shipping Act ;

"Ballast Water Convention" means the International Convention for the Control and Management of Ships' Ballast Water and Sediments signed in London on the 13th of February 2004 including any amendment or Protocol related thereto as may from time to time be ratified, acceded to or accepted by the Government of Malta and other instruments, standards and specifications of a mandatory nature related thereto adopted or developed by the International Maritime Organisation or in terms of regulation 3(2)(*a*) hereof.

"Certificate" means the International Ballast Water Management Certificate;

"Court" means the First Hall of the Civil Court of Malta;

"Minister" means the Minister responsible for shipping;

"Organization" means the International Maritime Organisation;

S.L. 352. 18

"Port Reception Facilities" shall have the same meaning assigned to them in the Port Reception Facilities for Ship-Generated Wastes and Cargo Residues Regulations [S.L. 352.18]

"Registrar-General" means the Registrar-General of Shipping and Seaman appointed under section 363 of the Merchant Shipping Act [Cap. 234] and includes any person acting under his authority;

Cap. 234

"Ships registered in Malta" means ships registered under section 3 of the Merchant Shipping Act [Cap. 234]

Cap. 226

"Territorial waters of Malta" shall have the same meaning assigned to the term in the Territorial Waters and Contiguous Zone Act [Cap. 226].

(2) Unless otherwise defined in these regulations or unless the context otherwise requires, words and expressions used in these regulations shall have the same meaning assigned to them in the Ballast Water Convention.

(3) The term ''Administration'' shall for the purposes of these regulations and the annexed schedule be read and construed as a reference to the Malta Maritime Authority as established under the Malta Maritime Authority Act [Cap. 352];

Ballast Water Convention given the force of law in Malta

4. (1) The Ballast Water Convention shall, unless otherwise provided in these regulations and notwithstanding the provision of any other law, form part of and be enforceable as part of the Law of Malta and shall apply to all Maltese ships and to all other ships while they are in Maltese waters as determined by the schedule annexed to these regulations.

(2) The Registrar-General may either on a case by case basis or through the issue of Merchant Shipping Notices -

(a) determine, lay down, prescribe, set or specify what may be required to be determined, laid down, prescribed, set or specified by these regulations or by the Ballast Water Convention, or expound on the requirements of these regulations or of such Convention or clarify their applicability or interpretation; and

(b) extend any of the provisions of the Ballast Water Convention to other classes of Maltese ships or, to other classes of ships when they are in Maltese waters;

and in so doing, and without prejudice to the generality of the foregoing, the

Registrar-General shall be guided by the circulars, clarifications, codes, decisions, directives, guidelines, instruments, interpretations, manuals, notices, publications, recommendations, regulations, resolutions, rules or any other similar medium of the International Maritime Organisation or any other body or organisation with an appropriate knowledge or competence on the subject matter.

(3) The administration shall issue certificates in terms of these regulations and the schedule annexed thereto.

(4) For the purposes of the last preceding sub-article, the administration shall act through the office of the Registrar-General or an organisation or body authorised in terms of article 367 of the Act or an official surveyor of ships appointed in terms of that article, duly authorised by the Registrar-General who shall, subject to the provisions of these regulations and the annexed schedule, determine the conditions of issue and validity of such certificates.

Duty to ensure compliance

5. (1) The Administration shall in accordance with its powers under Article 7(2) of the Malta Maritime Act, authorise any of its officers or employees to board any ship in port or outside port, for the purposes of determining whether a vessel is in compliance with these Regulations. The said authorized officials or employees shall inter alia and upon the instructions of the Administration:

(a) verify whether there is on board a valid certificate, which, if valid shall be accepted; and
(b) inspect the ballast water record book, and/or
(c) sample the vessel's ballast water.

(2) For the purposes of the last preceding sub-section, the time required to analyze the samples shall not unduly delay the operation, movement or departure of the ship.

Power to detain

6. The Registrar-General may, in any case where a ship is found to be contravening these regulations and there is in consequence a danger to the environment, after having duly notified the master, detain such ship until the Registrar-General is satisfied that such ship is fit to proceed to sea in terms of these regulations and the schedule annexed thereto.

Penalties

7. It shall be the duty of the owners of the company which has assumed the operation of the ship and of the master to ensure that the ship is in compliance with the provisions of these regulations and the applicable requirements of the annexed schedule. In case of default, such person shall for each offence be liable to a fine (*multa*) not exceeding 1000 units.

Jurisdiction

8. Any action for the recovery of any sums due under the last preceding Article shall be brought in Malta before the First Hall of the Civil Court which

shall have general jurisdiction to hear any claim relating to these regulations.

Provisions of rules and regulations inconsistent with the Ballast Water Convention

9. Save as provided for in these regulations, where any provision of any rules and regulations made under the Act are inconsistent with the provisions of the Ballast Water Convention, the provisions of this Convention shall, unless specifically provided for in such rules or regulations, prevail.

PART 2
Schedule

Text of Articles 1 to 16 of the International Convention for the Control and Management of Ships' Ballast Water and Sediments 2004, Sections A to E of the annexed Regulations for the control and management of ships' ballast water and sediments and Appendix I and II annexed thereto.

Article 1

Definitions

For the purpose of this Convention, unless expressly provided otherwise:

1. "Administration" means the Government of the State under whose authority the ship is operating. With respect to a ship entitled to fly a flag of any State, the Administration is the Government of that State. With respect to floating platforms engaged in exploration and exploitation of the sea-bed and subsoil thereof adjacent to the coast over which the coastal State exercises sovereign rights for the purposes of exploration and exploitation of its natural resources, including Floating Storage Units (FSUs) and Floating Production Storage and Offloading Units (FPSOs), the Administration is the Government of the coastal State concerned.

2. "Ballast Water" means water with its suspended matter taken on board a ship to control trim, list, draught, stability or stresses of the ship.

3. "Ballast Water Management" means mechanical, physical, chemical, and biological processes, either singularly or in combination, to remove, render harmless, or avoid the uptake or discharge of Harmful Aquatic Organisms and Pathogens within Ballast Water and Sediments.

4. "Certificate" means the International Ballast Water Management Certificate.

5. "Committee" means the Marine Environment Protection Committee

of the Organization.

6. "Convention" means the International Convention for the Control and Management of Ships' Ballast Water and Sediments.

7. "Gross tonnage" means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the

International Convention on Tonnage Measurement of Ships, 1969 or any successor Convention.

8. "Harmful Aquatic Organisms and Pathogens" means aquatic organisms or pathogens which, if introduced into the sea including estuaries, or into fresh water courses, may create hazards to the environment, human health, property or resources, impair biological diversity or interfere with other legitimate uses of such areas.

9. "Organization" means the International Maritime Organization.

10. "Secretary-General" means the Secretary-General of the Organization.

11. "Sediments" means matter settled out of Ballast Water within a ship.

12. "Ship" means a vessel of any type whatsoever operating in the aquatic environment and includes submersibles, floating craft, floating platforms, FSUs and FPSOs.

Article 2

General Obligations

1. Parties undertake to give full and complete effect to the provisions of this Convention and the Annex thereto in order to prevent, minimize and ultimately eliminate the transfer of Harmful Aquatic Organisms and Pathogens through the control and management of ships' Ballast Water and Sediments.

2. The Annex forms an integral part of this Convention. Unless expressly provided otherwise, a reference to this Convention constitutes at the same time a reference to the Annex.

3. Nothing in this Convention shall be interpreted as preventing a Party from taking, individually or jointly with other Parties, more stringent measures with respect to the prevention, reduction or elimination of the transfer of Harmful Aquatic Organisms and Pathogens through the control and management of ships' Ballast Water and Sediments, consistent with international law.

4. Parties shall endeavour to co-operate for the purpose of effective implementation, compliance and enforcement of this Convention.

5. Parties undertake to encourage the continued development of Ballast Water Management and standards to prevent, minimize and ultimately eliminate the transfer of Harmful Aquatic Organisms and Pathogens through the control and management of ships' Ballast Water and Sediments.

6. Parties taking action pursuant to this Convention shall endeavour not to impair or damage their environment, human health, property or resources, or those of other States.

7. Parties should ensure that Ballast Water Management practices used to comply with this Convention do not cause greater harm than they prevent to their environment, human health, property or resources, or those of other States.

8. Parties shall encourage ships entitled to fly their flag, and to which this Convention applies, to avoid, as far as practicable, the uptake of Ballast Water with potentially Harmful Aquatic Organisms and Pathogens, as well as Sediments that may contain such organisms, including promoting the adequate implementation of recommendations developed by the Organization.

9. Parties shall endeavour to co-operate under the auspices of the Organization to address threats and risks to sensitive, vulnerable or threatened marine ecosystems and biodiversity in areas beyond the limits of national jurisdiction in relation to Ballast Water Management.

Article 3

Application

1. Except as expressly provided otherwise in this Convention, this Convention shall apply to:

(a) ships entitled to fly the flag of a Party; and

(b) ships not entitled to fly the flag of a Party but which operate under the authority of a Party.

2. This Convention shall not apply to:

(a) ships not designed or constructed to carry Ballast Water;

(b) ships of a Party which only operate in waters under the jurisdiction of that Party, unless the Party determines that the

discharge of Ballast Water from such ships would impair or damage their environment, human health, property or resources, or those of adjacent or other States;

(c) ships of a Party which only operate in waters under the jurisdiction of another Party, subject to the authorization of the latter Party for such exclusion. No Party shall grant such authorization if doing so would impair or damage their environment, human health, property or resources, or those of adjacent or other States. Any Party not granting such authorization shall notify the Administration of the ship concerned that this Convention applies to such ship;

(d) ships which only operate in waters under the jurisdiction of one Party and on the high seas, except for ships not granted an authorization pursuant to sub-paragraph (c), unless such Party determines that the discharge of Ballast Water from such ships would impair or damage their environment, human health, property or resources, or those of adjacent of other States;

(e) any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service. However, each Party shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such ships owned or operated by it, that such ships act in a manner consistent, so far as is reasonable and practicable, with this Convention; and

(f) permanent Ballast Water in sealed tanks on ships, that is not subject to discharge.

3. With respect to ships of non-Parties to this Convention, Parties shall apply the requirements of this Convention as may be necessary to ensure that no more favourable treatment is given to such ships.

Article 4

Control of the Transfer of Harmful Aquatic Organisms and Pathogens Through Ships' Ballast Water and Sediments

1. Each Party shall require that ships to which this Convention applies and which are entitled to fly its flag or operating under its authority comply with the requirements set forth in this Convention, including the applicable standards and requirements in the Annex, and shall take effective measures to ensure that those ships comply with those requirements.

2. Each Party shall, with due regard to its particular conditions and capabilities, develop national policies, strategies or programmes for Ballast Water Management in its ports and waters under its jurisdiction that accord with, and promote the attainment of the objectives of this Convention.

Article 5

Sediment Reception Facilities

1. Each Party undertakes to ensure that, in ports and terminals designated by that Party where cleaning or repair of ballast tanks occurs, adequate facilities are provided for the reception of Sediments, taking into account the Guidelines developed by the Organization. Such reception facilities shall operate without causing undue delay to ships and shall provide for the safe disposal of such Sediments that does not impair or damage their environment, human health, property or resources or those of other States.

2. Each Party shall notify the Organization for transmission to the other Parties concerned of all cases where the facilities provided under paragraph 1 are alleged to be inadequate.

Article 6

Scientific and Technical Research and Monitoring

1. Parties shall endeavour, individually or jointly, to:

(a) promote and facilitate scientific and technical research on Ballast Water Management; and

(b) monitor the effects of Ballast Water Management in waters under their jurisdiction.

Such research and monitoring should include observation, measurement, sampling, evaluation and analysis of the effectiveness and adverse impacts of any technology or methodology as well as any adverse impacts caused by such organisms and pathogens that have been identified to have been transferred through ships' Ballast Water.

2. Each Party shall, to further the objectives of this Convention, promote the availability of relevant information to other Parties who request it on:

(a) scientific and technology programmes and technical measures

undertaken with respect to Ballast Water Management; and

(b) the effectiveness of Ballast Water Management deduced from any monitoring and assessment programmes.

Article 7

Survey and certification

1. Each Party shall ensure that ships flying its flag or operating under its authority and subject to survey and certification are so surveyed and certified in accordance with the regulations in the Annex.

2. A Party implementing measures pursuant to Article 2.3 and Section C of the Annex shall not require additional survey and certification of a ship of another Party, nor shall the Administration of the ship be obligated to survey and certify additional measures imposed by another Party. Verification of such additional measures shall be the responsibility of the Party implementing such measures and shall not cause undue delay to the ship.

Article 8

Violations

1. Any violation of the requirements of this Convention shall be prohibited and sanctions shall be established under the law of the Administration of the ship concerned, wherever the violation occurs. If the Administration is informed of such a violation, it shall investigate the matter and may request the reporting Party to furnish additional evidence of the alleged violation. If the Administration is satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, it shall cause such proceedings to be taken as soon as possible, in accordance with its law. The Administration shall promptly inform the Party that reported the alleged violation, as well as the Organization, of any action taken. If the Administration has not taken any action within 1 year after receiving the information, it shall so inform the Party which reported the alleged violation.

2. Any violation of the requirements of this Convention within the jurisdiction of any Party shall be prohibited and sanctions shall be established under the law of that Party. Whenever such a violation occurs, that Party shall either:

(a) cause proceedings to be taken in accordance with its law; or

(b) furnish to the Administration of the ship such information and evidence as may be in its possession that a violation has occurred.

3. The sanctions provided for by the laws of a Party pursuant to this Article shall be adequate in severity to discourage violations of this Convention wherever they occur.

Article 9

Inspection of Ships

1. A ship to which this Convention applies may, in any port or offshore terminal of another Party, be subject to inspection by officers duly authorized by that Party for the purpose of determining whether the ship is in compliance with this Convention. Except as provided in paragraph 2 of this Article, any such inspection is limited to:

(a) verifying that there is onboard a valid Certificate, which, if valid shall be accepted; and

(b) inspection of the Ballast Water record book, and/or

(c) sampling of the ship's Ballast Water, carried out in accordance with the guidelines to be developed by the Organization. However, the time required to analyse the samples shall not be used as a basis for unduly delaying the operation, movement or departure of the ship.

2. Where a ship does not carry a valid Certificate or there are clear grounds for believing that:

(a) the condition of the ship or its equipment does not correspond substantially with the particulars of the Certificate; or

(b) the master or the crew are not familiar with essential shipboard procedures relating to Ballast Water Management, or have not implemented such procedures;

a detailed inspection may be carried out.

3. In the circumstances given in paragraph 2 of this Article, the Party carrying out the inspection shall take such steps as will ensure that the ship

shall not discharge Ballast Water until it can do so without presenting a threat of harm to the environment, human health, property or resources.

Article 10

Detection of Violations and Control of Ships

1. Parties shall co-operate in the detection of violations and the enforcement of the provisions of this Convention.

2. If a ship is detected to have violated this Convention, the Party whose flag the ship is entitled to fly, and/or the Party in whose port or offshore terminal the ship is operating, may, in addition to any sanctions described in Article 8 or any action described in Article 9, take steps to warn, detain, or exclude the ship. The Party in whose port or offshore terminal the ship is operating, however, may grant such a ship permission to leave the port or offshore terminal for the purpose of discharging Ballast Water or proceeding to the nearest appropriate repair yard or reception facility available, provided doing so does not present a threat of harm to the environment, human health, property or resources.

3. If the sampling described in Article 9.1(c) leads to a result, or supports information received from another port or offshore terminal, indicating that the ship poses a threat to the environment, human health, property or resources, the Party in whose waters the ship is operating shall prohibit such ship from discharging Ballast Water until the threat is removed.

4. A Party may also inspect a ship when it enters the ports or offshore terminals under its jurisdiction, if a request for an investigation is received from any Party, together with sufficient evidence that a ship is operating or has operated in violation of a provision in this Convention. The report of such investigation shall be sent to the Party requesting it and to the competent authority of the Administration of the ship concerned so that appropriate action may be taken.

Article 11

Notification of Control Actions

1. If an inspection conducted pursuant to Article 9 or 10 indicates a violation of this Convention, the ship shall be notified. A report shall be forwarded to the Administration, including any evidence of the violation.

2. In the event that any action is taken pursuant to Article 9.3, 10.2 or 10.3, the officer carrying out such action shall forthwith inform, in writing, the Administration of the ship concerned, or if this is not possible, the consul or

diplomatic representative of the ship concerned, of all the circumstances in which the action was deemed necessary. In addition, the recognized organization responsible for the issue of certificates shall be notified.

3. The port State authority concerned shall, in addition to parties mentioned in paragraph 2, notify the next port of call of all relevant information about the violation, if it is unable to take action as specified in Article 9.3, 10.2 or 10.3 or if the ship has been allowed to proceed to the next port of call.

Article 12

Undue Delay to Ships

1. All possible efforts shall be made to avoid a ship being unduly detained or delayed under Article 7.2, 8, 9 or 10.

2. When a ship is unduly detained or delayed under Article 7.2, 8, 9 or 10, it shall be entitled to compensation for any loss or damage suffered.

Article 13

Technical Assistance, Co-operation and Regional Co-operation

1. Parties undertake, directly or through the Organization and other international bodies, as appropriate, in respect of the control and management of ships' Ballast Water and Sediments, to provide support for those Parties which request technical assistance:

(a) to train personnel;

(b) to ensure the availability of relevant technology, equipment and facilities;

(c) to initiate joint research and development programmes; and

(d) to undertake other action aimed at the effective implementation of this Convention and of guidance developed by the Organization related thereto.

2. Parties undertake to co-operate actively, subject to their national laws, regulations and policies, in the transfer of technology in respect of the control and management of ships' Ballast Water and Sediments.

3. In order to further the objectives of this Convention, Parties with

common interests to protect the environment, human health, property and resources in a given geographical area, in particular, those Parties bordering enclosed and semi-enclosed seas, shall endeavour, taking into account characteristic regional features, to enhance regional co-operation, including through the conclusion of regional agreements consistent with this Convention. Parties shall seek to co-operate with the Parties to regional agreements to develop harmonized procedures.

Article 14

Communication of information

1. Each Party shall report to the Organization and, where appropriate, make available to other Parties the following information:

(a) any requirements and procedures relating to Ballast Water Management, including its laws, regulations, and guidelines for implementation of this Convention;

(b) the availability and location of any reception facilities for the environmentally safe disposal of Ballast Water and Sediments; and

(c) any requirements for information from a ship which is unable to comply with the provisions of this Convention for reasons specified in regulations A-3 and B-4 of the Annex.

2. The Organization shall notify Parties of the receipt of any communications under the present Article and circulate to all Parties any information communicated to it under subparagraphs 1(b) and (c) of this Article.

Article 15

Dispute Settlement

Parties shall settle any dispute between them concerning the interpretation or application of this Convention by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their own choice.

Article 16

Relationship to International Law and Other Agreements

Nothing in this Convention shall prejudice the rights and obligations of any State under customary international law as reflected in the United Nations Convention on the Law of the Sea.

ANNEX

REGULATIONS FOR THE CONTROL AND MANAGEMENT OF SHIPS' BALLAST WATER AND SEDIMENTS

SECTION A – GENERAL PROVISIONS

Regulation A-1 Definitions

For the purposes of this Annex:

1. "Anniversary date" means the day and the month of each year corresponding to the date of expiry of the Certificate.

2. "Ballast Water Capacity" means the total volumetric capacity of any tanks, spaces or compartments on a ship used for carrying, loading or discharging Ballast Water, including any multi-use tank, space or compartment designed to allow carriage of Ballast Water.

3. "Company" means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who on assuming such responsibility has agreed to take over all the duties and responsibilities imposed by the International Safety Management Code.[1]

4. "Constructed" in respect of a ship means a stage of construction where:

1) the keel is laid; or

2) construction identifiable with the specific ship begins;

3) assembly of the ship has commenced comprising at least 50 tonnes or 1 percent of the estimated mass of all structural material, whichever is less; or

[1] Refer to ISM Code adopted by the Organization by Resolution A.741(18), as amended.

4) the ship undergoes a major conversion.

5. "Major conversion" means a conversion of a ship:

1) which changes its ballast water carrying capacity by 15 percent or greater, or

2) which changes the ship type, or

3) which, in the opinion of the Administration, is projected to prolong its life by ten years or more, or

4) which results in modifications to its ballast water system other than component replacement-in-kind. Conversion of a ship to meet the provisions of regulation D-1 shall not be deemed to constitute a major conversion for the purpose of this Annex.

6. "From the nearest land" means from the baseline from which the territorial sea of the territory in question is established in accordance with international law except that, for the purposes of the Convention, "from the nearest land" off the north-eastern coast of Australia shall mean from a line drawn from a point on the coast of Australia in

latitude 11°00' S, longitude 142°08' E
to a point in latitude 10°35' S, longitude 141°55' E
thence to a point latitude 10°00' S, longitude 142°00' E
thence to a point latitude 9°10' S, longitude 143°52' E
thence to a point latitude 9°00' S, longitude 144°30' E
thence to a point latitude 10°41' S, longitude 145°00' E
thence to a point latitude 13°00' S, longitude 145°00' E
thence to a point latitude 15°00' S, longitude 146°00' E
thence to a point latitude 17°30' S, longitude 147°00' E
thence to a point latitude 21°00' S, longitude 152°55' E
thence to a point latitude 24°30' S, longitude 154°00' E
thence to a point on the coast of Australia
in latitude 24°42' S, longitude 153°15' E.

7. "Active Substance" means a substance or organism, including a virus or a general or specific action on or against Harmful Aquatic Organisms and Pathogens.

Regulation A-2 General Applicability

Except where expressly provided otherwise, the discharge of Ballast Water shall only be conducted through Ballast Water Management in accordance with the provisions of this Annex.

Regulation A-3 Exceptions

The requirements of regulation B-3, or any measures adopted by a Party pursuant to Article 2.3 and Section C, shall not apply to:

1. the uptake or discharge of Ballast Water and Sediments necessary for the purpose of ensuring the safety of a ship in emergency situations or saving life at sea; or

2. the accidental discharge or ingress of Ballast Water and sediments resulting from damage to a ship or its equipment:

(1) provided that all reasonable precautions have been taken before and after the occurrence of the damage or discovery of the damage or discharge for the purpose of preventing or minimizing the discharge; and

(2) unless the owner, Company or officer in charge wilfully or recklessly caused damage; or

3. the uptake and discharge of Ballast Water and Sediments when l purpose of avoiding or minimizing pollution incidents from the ship; or

4. the uptake and subsequent discharge on the high seas of the same Ballast Water and Sediments; or

5. the discharge of Ballast Water and Sediments from a ship at the same location where the whole of that Ballast Water and those Sediments originated and provided that no mixing with unmanaged Ballast Water and Sediments from other areas has occurred. If mixing has occurred, the Ballast Water taken from other areas is subject to Ballast Water Management in accordance with this Annex.

Regulation A-4 Exemptions

1. A Party or Parties, in waters under their jurisdiction, may grant exemptions to any requirements to apply regulations B-3 or C-1, in addition to those exemptions contained elsewhere in this Convention, but only when they are:

1) granted to a ship or ships on a voyage or voyages between specified ports or locations; or to a ship which operates

exclusively between specified ports or locations;

2) effective for a period of no more than five years subject to intermediate review;

3) granted to ships that do not mix Ballast Water or Sediments other than between the ports or locations specified in paragraph 1.1; and

4) granted based on the Guidelines on risk assessment developed by the Organization.

2. Exemptions granted pursuant to paragraph 1 shall not be effective until after communication to the Organization and circulation of relevant information to the Parties.

3. Any exemptions granted under this regulation shall not impair or damage the environment, human health, property or resources of adjacent or other States. Any State that the Party determines may be adversely affected shall be consulted, with a view to resolving any identified concerns.

4. Any exemptions granted under this regulation shall be recorded in the Ballast Water record book.

Regulation A-5 Equivalent compliance

Equivalent compliance with this Annex for pleasure craft used solely for recreation or competition or craft used primarily for search and rescue, less than 50 metres in length overall, and with a maximum Ballast Water capacity of 8 cubic metres, shall be determined by the Administration taking into account Guidelines developed by the Organization

SECTION B - MANAGEMENT AND CONTROL REQUIREMENTS

FOR SHIPS Regulation B-1 Ballast Water Management Plan

Each ship shall have on board and implement a Ballast Water Management plan. Such a plan shall be approved by the Administration taking into account Guidelines developed by the Organization. The Ballast Water Management plan shall be specific to each ship and shall at least:

1. detail safety procedures for the ship and the crew associated with Ballast Water Management as required by this Convention;

2. provide a detailed description of the actions to be taken to implement the Ballast Water Management requirements and supplemental Ballast Water Management practices as set forth in this Convention;

3. detail the procedures for the disposal of Sediments:

1) at sea; and

2) to shore;

4. include the procedures for coordinating shipboard Ballast Water Management that involves discharge to the sea with the authorities of the State into whose waters such discharge will take place;

5. designate the officer on board in charge of ensuring that the plan is properly implemented;

6. contain the reporting requirements for ships provided for under this Convention; and

7. be written in the working language of the ship. If the language used is not English, French or Spanish, a translation into one of these languages shall be included.

Regulation B-2 Ballast Water Record Book

1. Each ship shall have on board a Ballast Water record book that may be an electronic record system, or that may be integrated into another record book or system and, which shall at least contain the information specified in Appendix II.

2. Ballast Water record book entries shall be maintained on board the ship for a minimum period of two years after the last entry has been made and thereafter in the Company's control for a minimum period of three years.

3. In the event of the discharge of Ballast Water pursuant to regulations A-3, A-4 or B-3.6 or in the event of other accidental or exceptional discharge of Ballast Water not otherwise exempted by this Convention, an entry shall be made in the Ballast Water record book

describing the circumstances of, and the reason for, the discharge.

4. The Ballast Water record book shall be kept readily available for inspection at all reasonable times and, in the case of an unmanned ship under tow, may be kept on the towing ship.

5. Each operation concerning Ballast Water shall be fully recorded without delay in the Ballast Water record book. Each entry shall be signed by the officer in charge of the operation concerned and each completed page shall be signed by the master. The entries in the Ballast Water record book shall be in a working language of the ship. If that language is not English, French or Spanish the entries shall contain a translation into one of those languages. When entries in an official national language of the State whose flag the ship is entitled to fly are also used, these shall prevail in case of a dispute or discrepancy.

6. Officers duly authorized by a Party may inspect the Ballast Water record book on board any ship to which this regulation applies while the ship is in its port or offshore terminal, and may make a copy of any entry, and require the master to certify that the copy is a true copy. Any copy so certified shall be admissible in any judicial proceeding as evidence of the facts stated in the entry. The inspection of a Ballast Water record book and the taking of a certified copy shall be performed as expeditiously as possible without causing the ship to be unduly delayed.

Regulation B-3 Ballast Water Management for Ships

1. A ship constructed before 2009:

1) with a Ballast Water Capacity of between 1,500 and 5,000 cubic metres, inclusive, shall conduct Ballast Water Management that at least meets the standard described in regulation D-1 or regulation D-2 until 2014, after which time it shall at least meet the standard described in regulation D-2;

2) with a Ballast Water Capacity of less than 1,500 or greater than 5,000 cubic metres shall conduct Ballast Water Management that at least meets the standard described in regulation D-1 or regulation D-2 until 2016, after which time it shall at least meet the standard described in regulation D-2.

2. A ship to which paragraph 1 applies shall comply with paragraph 1 not later than the first intermediate or renewal survey, whichever occurs first, after the anniversary date of delivery of the ship in the year of compliance with the standard applicable to the ship.

3. A ship constructed in or after 2009 with a Ballast Water Capacity of

less than 5,000 cubic metres shall conduct Ballast Water Management that at least meets the standard described in regulation D-2.

4. A ship constructed in or after 2009, but before 2012, with a Ballast Water Capacity of 5,000 cubic metres or more shall conduct Ballast Water Management in accordance with paragraph 1.2.

5. A ship constructed in or after 2012 with a Ballast Water Capacity of 5000 cubic metres or more shall conduct Ballast Water Management that at least meets the standard described in regulation D-2.

6. The requirements of this regulation do not apply to ships that discharge Ballast Water to a reception facility designed taking into account the Guidelines developed by the Organization for such facilities.

7. Other methods of Ballast Water Management may also be accepted as alternatives to the requirements described in paragraphs 1 to 5, provided that such methods ensure at least the same level of protection to the environment, human health, property or resources, and are approved in principle by the Committee.

Regulation B-4 Ballast Water Exchange

1. A ship conducting Ballast Water exchange to meet the standard in regulation D-1 shall:

1) whenever possible, conduct such Ballast Water exchange at least 200 nautical miles from the nearest land and in water at least 200 metres in depth, taking into account the Guidelines developed by the Organization;

2) cases where the ship is unable to conduct Ballast Water exchange in accordance with paragraph 1.1, such Ballast Water exchange shall be conducted taking into account the Guidelines described in paragraph 1.1 and as far from the nearest land as possible, and in all cases at least 50 nautical miles from the nearest land and in water at least 200 metres in depth.

2. In sea areas where the distance from the nearest land or the depth does not meet the parameters described in paragraph 1.1 or 1.2, the port State may designate areas, in consultation with adjacent or other States, as appropriate, where a ship may conduct Ballast Water exchange, taking into account the Guidelines described in paragraph 1.1.

3. A ship shall not be required to deviate from its intended voyage, or delay the voyage, in order to comply with any particular requirement of

paragraph 1.

4. A ship conducting Ballast Water exchange shall not be required to comply with paragraphs 1 or 2, as appropriate, if the master reasonably decides that such exchange would threaten the safety or stability of the ship, its crew, or its passengers because of adverse weather, ship design or stress, equipment failure, or any other extraordinary condition.

5. When a ship is required to conduct Ballast Water exchange and does not do so in accordance with this regulation, the reasons shall be entered in the Ballast Water record book.

Regulation B-5 Sediment Management for Ships

1. All ships shall remove and dispose of Sediments from spaces designated to carry Ballast Water in accordance with the provisions of the ship's Ballast Water Management plan.

2. Ships described in regulation B-3.3 to B-3.5 should, without compromising safety or operational efficiency, be designed and constructed with a view to minimize the uptake and undesirable entrapment of Sediments, facilitate removal of Sediments, and provide safe access to allow for Sediment removal and sampling, taking into account guidelines developed by the Organization. Ships described in regulation B-3.1 should, to the extent practicable, comply with this paragraph.

Regulation B-6 Duties of Officers and Crew

Officers and crew shall be familiar with their duties in the implementation of Ballast Water Management particular to the ship on which they serve and shall, appropriate to their duties, be familiar with the ship's Ballast Water Management plan.

SECTION C - SPECIAL REQUIREMENTS IN CERTAIN AREAS

Regulation C-1 Additional Measures

1. If a Party, individually or jointly with other Parties, determines that measures in addition to those in Section B are necessary to prevent, reduce, or eliminate the transfer of Harmful Aquatic Organisms and Pathogens

through ships' Ballast Water and Sediments, such Party or Parties may, consistent with international law, require ships to meet a specified standard or requirement.

2. Prior to establishing standards or requirements under paragraph 1, a Party or Parties should consult with adjacent or other States that may be affected by such standards or requirements.

3. A Party or Parties intending to introduce additional measures in accordance with
paragraph 1 shall:

1) take into account the Guidelines developed by the Organization.

2) communicate their intention to establish additional measure(s) to the Organization at least 6 months, except in emergency or epidemic situations, prior to the projected date of implementation of the measure(s). Such communication shall include:

1) the precise co-ordinates where additional measure(s) is/are applicable;

2) the need and reasoning for the application of the additional measure(s) including, whenever possible, benefits;

3) a description of the additional measure(s); and

4) any arrangements that may be provided to facilitate ships' compliance with the additional measure(s).

3) to the extent required by customary international law as reflected in the United Nations Convention on the Law of the Sea, as appropriate, obtain the approval of the Organization.

4. A Party or Parties, in introducing such additional measures, shall endeavour to make available all appropriate services, which may include but are not limited to notification to mariners of areas, available and alternative routes or ports, as far as practicable, in order to ease the burden on the ship.

5. Any additional measures adopted by a Party or Parties shall not compromise the safety and security of the ship and in any circumstances not conflict with any other convention with which the ship must comply.

6. A Party or Parties introducing additional measures may waive these measures for a period of time or in specific circumstances as they deem fit.

Regulation C-2 Warnings Concerning Ballast Water Uptake in Certain Areas and Related Flag State Measures

1. A Party shall endeavour to notify mariners of areas under their jurisdiction where ships should not uptake Ballast Water due to known conditions. The Party shall include in such notices the precise coordinates of the area or areas, and, where possible, the location of any alternative area or areas for the uptake of Ballast Water. Warnings may be issued for areas:

1) known to contain outbreaks, infestations, or populations of Harmful Aquatic Organisms and Pathogens (e.g., toxic algal blooms) which are likely to be of relevance to Ballast Water uptake or discharge;

2) near sewage outfalls; or

3) where tidal flushing is poor or times during which a tidal stream is known to be more turbid.

2. In addition to notifying mariners of areas in accordance with the provisions of paragraph 1, a Party shall notify the Organization and any potentially affected coastal States of any areas identified in paragraph 1 and the time period such warning is likely to be in effect. The notice to the Organization and any potentially affected coastal States shall include the precise coordinates of the area or areas, and, where possible, the location of any alternative area or areas for the uptake of Ballast Water. The notice shall include advice to ships needing to uptake Ballast Water in the area, describing arrangements made for alternative supplies. The Party shall also notify mariners, the Organization, and any potentially affected coastal States when a given warning is no longer applicable.

Regulation C-3 Communication of Information

The Organization shall make available, through any appropriate means, information communicated to it under regulations C-1 and C-2.

SECTION D - STANDARDS FOR BALLAST WATER MANAGEMENT

Regulation D-1 Ballast Water Exchange Standard

1. Ships performing Ballast Water exchange in accordance with this regulation shall do so with an efficiency of at least 95 percent volumetric exchange of Ballast Water.

2. For ships exchanging Ballast Water by the pumping-through method, pumping through three times the volume of each Ballast Water tank shall be considered to meet the standard described in paragraph 1. Pumping through less than three times the volume may be accepted provided the ship can demonstrate that at least 95 percent volumetric exchange is met.

Regulation D-2 Ballast Water Performance Standard

1. Ships conducting Ballast Water Management in accordance with this regulation shall discharge less than 10 viable organisms per cubic metre greater than or equal to 50 micrometres in minimum dimension and less than 10 viable organisms per millilitre less than 50 micrometres in minimum dimension and greater than or equal to 10 micrometres in minimum dimension; and discharge of the indicator microbes shall not exceed the specified concentrations described in paragraph 2.

2. Indicator microbes, as a human health standard, shall include:

1) Toxicogenic Vibrio cholerae (01 and 0139) with less than 1 colony forming unit (cfu) per 100 millilitres or less than 1 cfu per 1 gram (wet weight) zooplankton samples ;

2) Escherichia coli less than 250 cfu per 100 millilitres;

3) Intestinal Enterococci less than 100 cfu per 100 milliliters.

Regulation D-3 Approval requirements for Ballast Water Management systems

1. Except as specified in paragraph 2, Ballast Water Management systems used to comply with this Convention must be approved by the Administration taking into account Guidelines developed by the Organization.

2. Ballast Water Management systems which make use of Active Substances or preparations containing one or more Active Substances to comply with this Convention shall be approved by the Organization, based on a procedure

developed by the Organization. This procedure shall describe the approval and withdrawal of approval of Active Substances and their proposed manner of application. At withdrawal of approval, the use of the relevant Active Substance or Substances shall be prohibited within 1 year after the date of such withdrawal.

3. Ballast Water Management systems used to comply with this Convention must be safe in terms of the ship, its equipment and the crew.

Regulation D-4 Prototype Ballast Water Treatment Technologies

1. For any ship that, prior to the date that the standard in regulation D-2 would otherwise become effective for it, participates in a programme approved by the Administration to test and evaluate promising Ballast Water treatment technologies, the standard in regulation D-2 shall not apply to that ship until five years from the date on which the ship would otherwise be required to comply with such standard.

2. For any ship that, after the date on which the standard in regulation D-2 has become effective for it, participates in a programme approved by the Administration, taking into account Guidelines developed by the Organization, to test and evaluate promising Ballast Water technologies with the potential to result in treatment technologies achieving a standard higher than that in regulation D-2, the standard in regulation D-2 shall cease to apply to that ship for five years from the date of installation of such technology.

3. In establishing and carrying out any programme to test and evaluate promising Ballast Water technologies, Parties shall:

1) take into account Guidelines developed by the Organization;

2) allow participation only by the minimum number of ships necessary to effectively test such technologies.

4. Throughout the test and evaluation period, the treatment system must be operated consistently and as designed.

Regulation D-5 Review of Standards by the Organization

1. At a meeting of the Committee held no later than three years before the earliest effective date of the standard set forth in regulation D-2, the Committee shall undertake a review which includes a determination of whether appropriate technologies are available to achieve the standard, an assessment of the criteria in paragraph 2, and an assessment of the socio-

economic effect(s) specifically in relation to the developmental needs of developing countries, particularly small island developing States. The Committee shall also undertake periodic reviews, as appropriate, to examine the applicable requirements for ships described in regulation B-3.1 as well as any other aspect of Ballast Water Management addressed in this Annex, including any Guidelines developed by the Organization.

2. Such reviews of appropriate technologies shall also take into account:

1) safety considerations relating to the ship and the crew;

2) environmental acceptability, i.e., not causing more or greater environmental impacts than they solve;

3) practicability, i.e., compatibility with ship design and operations;

4) cost effectiveness, i.e., economics; and.

5) biological effectiveness in terms of removing, or otherwise rendering not viable, Harmful Aquatic Organisms and Pathogens in Ballast Water.

3. The Committee may form a group or groups to conduct the review(s) described in paragraph 1. The Committee shall determine the composition, terms of reference and specific issues to be addressed by any such group formed. Such groups may develop and recommend proposals for amendment of this Annex for consideration by the Parties. Only Parties may participate in the formulation of recommendations and amendment decisions taken by the Committee.

4. If, based on the reviews described in this regulation, the Parties decide to adopt amendments to this Annex, such amendments shall be adopted and enter into force in accordance with the procedures contained in Article 19 of this Convention.

SECTION E - SURVEY AND CERTIFICATION REQUIREMENTS FOR BALLAST WATER MANAGEMENT

Regulation E-1 Surveys

1. Ships of 400 gross tonnage and above to which this Convention applies, excluding floating platforms, FSUs and FPSOs, shall be subject to surveys specified below:

1) An initial survey before the ship is put in service or before the Certificate required under regulation E-2 or E-3 is issued for the first time. This survey shall verify that the Ballast Water Management plan required by regulation B-1 and any associated structure, equipment, systems, fitting, arrangements and material or processes comply fully with the requirements of this Convention.

2) A renewal survey at intervals specified by the Administration, but not exceeding five years, except where regulation E-5.2, E-5.5, E-5.6, or E-5.7 is applicable. This survey shall verify that the Ballast Water Management plan required by regulation B-1 and any associated structure, equipment, systems, fitting, arrangements and material or processes comply fully with the applicable requirements of this Convention.

3) An intermediate survey within three months before or after the second Anniversary date or within three months before or after the third Anniversary date of the Certificate, which shall take the place of one of the annual surveys specified in paragraph 1.4. The intermediate surveys shall ensure that the equipment, associated systems and processes for Ballast Water Management fully comply with the applicable requirements of this Annex and are in good working order. Such intermediate surveys shall be endorsed on the Certificate issued under regulation E-2 or E-3.

4) An annual survey within three months before or after each Anniversary date, including a general inspection of the structure, any equipment, systems, fittings, arrangements and material or processes associated with the Ballast Water Management plan required by regulation B-1 to ensure that they have been maintained in accordance with paragraph 9 and remain satisfactory for the service for which the ship is intended. Such annual surveys shall be endorsed on the Certificate issued under Regulations E-2 and E-3.

5) An additional survey either general or partial, according to the circumstances, shall be made after a change, replacement, or significant repair of the structure, equipment, systems, fittings, arrangements and material necessary to achieve full compliance with this Convention. The survey shall be such as to ensure that any such change, replacement, or significant repair has been effectively made, so that the ship complies with the requirements of this Convention. Such surveys shall be endorsed on the Certificate issued under regulation E-2 or E-3.

2. The Administration shall establish appropriate measures for ships that are not subject to the provisions of paragraph 1 in order to ensure that the applicable provisions of this Convention are complied with.

3. Surveys of ships for the purpose of enforcement of the provisions of this Convention shall be carried out by officers of the Administration. The Administration may, however, entrust the surveys either to surveyors nominated for the purpose or to organizations recognized by it.

4. An Administration nominating surveyors or recognizing organizations to conduct surveys, as described in paragraph 3 shall, as a minimum, empower such nominated surveyors or recognized organizations[2] to:

1) require a ship that they survey to comply with the provisions of this Convention; and

2) carry out surveys and inspections if requested by the appropriate authorities of a port State that is a Party.

5. The Administration shall notify the Organization of the specific responsibilities and conditions of the authority delegated to the nominated surveyors or recognized organizations, for circulation to Parties for the information of their officers.

6. When the Administration, a nominated surveyor, or a recognized organization determines that the ship's Ballast Water Management does not conform to the particulars of the Certificate required under regulation E-2 or E-3 or is such that the ship is not fit to proceed to sea without presenting a threat of harm to the environment, human health, property or resources such surveyor or organization shall immediately ensure that corrective action is taken to bring the ship into compliance. A surveyor or organization shall be notified immediately, and it shall ensure that the Certificate is not issued or is withdrawn as appropriate. If the ship is in the port of another Party, the appropriate authorities of the port State shall be notified immediately. When an officer of the Administration, a nominated surveyor, or a recognized organization has notified the appropriate authorities of the port State, the Government of the port State concerned shall give such officer, surveyor or organization any necessary assistance to carry out their obligations under this regulation, including any action described in Art. 9.

7. Whenever an accident occurs to a ship or a defect is discovered which substantially affects the ability of the ship to conduct Ballast Water Management in accordance with this Convention, the owner, operator or other person in charge of the ship shall report at the earliest opportunity to the Administration, the recognized organization or the nominated surveyor responsible for issuing the relevant Certificate, who shall cause investigations to be initiated to determine whether a survey as required by

paragraph 1 is necessary. If the ship is in a port of another Party, the owner, operator or other person in charge shall also report immediately to the appropriate authorities of the port State and the nominated surveyor or recognized organization shall ascertain that such report has been made.

8. In every case, the Administration concerned shall fully guarantee the completeness and efficiency of the survey and shall undertake to ensure the necessary arrangements to satisfy this obligation.

9. The condition of the ship and its equipment, systems and processes shall be maintained to conform with the provisions of this Convention to ensure that the ship in all respects will remain fit to proceed to sea without presenting a threat of harm to the environment, human health, property or resources.

10. After any survey of the ship under paragraph 1 has been completed, no change shall be made in the structure, any equipment, fittings, arrangements or material associated with the Ballast Water Management plan required by regulation B-1 and covered by the survey without the sanction of the Administration, except the direct replacement of such equipment or fittings.

Regulation E-2 Issuance or Endorsement of a Certificate

1. The Administration shall ensure that a ship to which regulation E-I applies is issued a Certificate after successful completion of a survey conducted in accordance with regulation E-l. A Certificate issued under the authority of a Party shall be accepted by the other Parties and regarded for all purposes covered by this Convention as having the same validity as a Certificate issued by them.

2. Certificates shall be issued or endorsed either by the Administration or by any person or organization duly authorized by it. In every case, the Administration assumes full responsibility for the Certificate.

Regulation E-3 Issuance or Endorsement of a Certificate by Another Party

1. At the request of the Administration, another Party may cause a ship to be surveyed and, if satisfied that the provisions of this Convention are complied with, shall issue or authorize the issuance of a Certificate to the ship, and where appropriate, endorse or authorize the endorsement of that Certificate on the ship, in accordance with this Annex.

2. A copy of the Certificate and a copy of the survey report shall be transmitted as soon as possible to the requesting Administration.

3. A Certificate so issued shall contain a statement to the effect that it has been issued at the request of the Administration and it shall have the same force and receive the same recognition as a Certificate issued by the Administration.

4. No Certificate shall be issued to a ship entitled to fly the flag of a State which is not a Party.

Regulation E-4 Form of the Certificate

The Certificate shall be drawn up in the official language of the issuing Party, in the form set forth in Appendix I. If the language used is neither English, French nor Spanish, the text shall include a translation into one of these languages.

Regulation E-5 Duration and Validity of the Certificate

1. A Certificate shall be issued for a period specified by the Administration that shall not exceed five years.

2. For renewal surveys:

l) Notwithstanding the requirements of paragraph 1, when the renewal survey is completed within three months before the expiry date of the existing Certificate, the new Certificate shall be valid from the date of completion of the renewal survey to a date not exceeding five years from the date of expiry of the existing Certificate.

2) When the renewal survey is completed after the expiry date of the existing Certificate, the new Certificate shall be valid from the date of completion of the renewal survey to a date not exceeding five years from the date of expiry of the existing Certificate.

3) When the renewal survey is completed more than three months before the expiry date of the existing Certificate, the new Certificate shall be valid from the date of completion of the renewal survey to a date not exceeding five years from the date of completion of the renewal survey.

3. If a Certificate is issued for a period of less than five years, the Administration may extend the validity of the Certificate beyond the expiry date to the maximum period specified in paragraph 1, provided that the surveys referred to in regulation E-1.1.3 applicable when a Certificate is

issued for a period of five years are carried out as appropriate.

4. If a renewal survey has been completed and a new Certificate cannot be issued or placed on board the ship before the expiry date of the existing Certificate, the person or organization authorized by the Administration may endorse the existing Certificate and such a Certificate shall be accepted as valid for a further period which shall not exceed five months from the expiry date.

5. If a ship at the time when the Certificate expires is not in a port in which it is to be surveyed, the Administration may extend the period of validity of the Certificate but this extension shall be granted only for the purpose of allowing the ship to complete its voyage to the port in which it is to be surveyed, and then only in cases where it appears proper and reasonable to do so. No Certificate shall be extended for a period longer than three months, and a ship to which such extension is granted shall not, on its arrival in the port in which it is to be surveyed, be entitled by virtue of such extension to leave that port without having a new Certificate. When the renewal survey is completed, the new Certificate shall be valid to a date not exceeding five years from the date of expiry of the existing Certificate before the extension was granted.

6. A Certificate issued to a ship engaged on short voyages which has not been extended under the foregoing provisions of this regulation may be extended by the Administration for a period of grace of up to one month from the date of expiry stated on it. When the renewal survey is completed, the new Certificate shall be valid to a date not exceeding five years from the date of expiry of the existing Certificate before the extension was granted.

7. In special circumstances, as determined by the Administration, a new Certificate need not be dated from the date of expiry of the existing Certificate as required by paragraph 2.2, 5 or 6 of this regulation. In these special circumstances, the new Certificate shall be valid to a date not exceeding five years from the date of completion of the renewal survey.

8. If an annual survey is completed before the period specified in regulation E-1, then:

1) the Anniversary date shown on the Certificate shall be amended by endorsement to a date which shall not be more than three months later than the date on which the survey was completed;

2) the subsequent annual or intermediate survey required by regulation E-1 shall be completed at the intervals prescribed by that regulation using the new Anniversary date;

3) the expiry date may remain unchanged provided one or more

annual surveys, as appropriate, are carried out so that the maximum intervals between the surveys prescribed by regulation E-1 are not exceeded.

9. A Certificate issued under regulation E-2 or E-3 shall cease to be valid in any of the following cases:

1) if the structure, equipment, systems, fittings, arrangements and material necessary to comply fully with this Convention is changed, replaced or significantly repaired and the Certificate is not endorsed in accordance with this Annex;

2) upon transfer of the ship to the flag of another State. A new Certificate shall only be issued when the Party issuing the new Certificate is fully satisfied that the ship is in compliance with the requirements of regulation E-1. In the case of a transfer between Parties, if requested within three months after the transfer has taken place, the Party whose flag the ship was formerly entitled to fly shall, as soon as possible, transmit to the Administration copies of the Certificates carried by the ship before the transfer and, if available, copies of the relevant survey reports;

3) if the relevant surveys are not completed within the periods specified under regulation E-1.1; or

4) if the Certificate is not endorsed in accordance with regulation E-1.1.

———————

FORM OF INTERNATIONAL BALLAST WATER MANAGEMENT CERTIFICATE

INTERNATIONAL BALLAST WATER MANAGEMENT CERTIFICATE

Issued under the provisions of the International Convention for the Control and Management of Ships' Ballast Water and Sediments (hereinafter referred to as "the Convention") by the Malta Maritime Authority under the authority of the Government of Malta

Particulars of ship[1]

Name of ship .....

Distinctive number or letters .....

Port of registry .....

Gross Tonnage .....

IMO number .....

Date of Construction .....

Ballast Water Capacity (in cubic metres) .....

Details of Ballast Water Management Method(s) Used

Method of Ballast Water Management used .....

Date installed (if applicable) .....

Name of manufacturer (if applicable) .....

[1] Alternatively, the particulars of the ship may be placed horizontally in boxes.

The principal Ballast Water Management method(s) employed on this ship is/are:

- ❑ in accordance with regulation D-1
- ❑ in accordance with regulation D-2

(describe)…….

- ❑ the ship is subject to regulation D-4

THIS IS TO CERTIFY:

1 That the ship has been surveyed in accordance with regulation E-1 of the Annex to the Convention; and

2 That the survey shows that Ballast Water Management on the ship complies with the Annex to the Convention.

This certificate is valid until .....subject to surveys in accordance with regulation E-1 of the Annex to the Convention.

Completion date of the survey on which this certificate is based: _____

Issued at .....
(Place of issue of certificate)

....
(Date of issue) *Signature of authorized official issuing the certificate)*

(Seal or stamp of the authority, as appropriate)

ENDORSEMENT FOR ANNUAL AND INTERMEDIATE SURVEY(S)

THIS IS TO CERTIFY that a survey required by regulation E-1 of the Annex to the Convention the ship was found to comply with the relevant provisions of the Convention:

Annual survey: Signed .....
(Signature of duly authorized official)

Place .....

Date .....

(Seal or stamp of the authority, as appropriate)

Annual*/Intermediate survey*: Signed .....
(Signature of duly authorized official)

Place .....

Date .....

(Seal or stamp of the authority, as appropriate)

Annual*/Intermediate survey*: Signed .....
(Signature of duly authorized official)

Place .....

Date .....

(Seal or stamp of the authority, as appropriate)

Annual survey: Signed .....
(Signature of duly authorized official)

Place .....

Date .....

(Seal or stamp of the authority, as appropriate)

* Delete as appropriate.

ANNUAL/INTERMEDIATE SURVEY
IN ACCORDANCE WITH REGULATION E-5.8.3

THIS IS TO CERTIFY that, at an annual/intermediate* survey in accordance with regulation E-5.8.3 of the Annex to the Convention, the ship was found to comply with the relevant provisions of the Convention:

Signed .....
(Signature of authorized official)

Place .....

Date .....

(Seal or stamp of the authority, as appropriate)

ENDORSEMENT TO EXTEND THE CERTIFICATE IF VALID
FOR LESS THAN 5 YEARS WHERE REGULATION E-5.3 APPLIES

The ship complies with the relevant provisions of the Convention, and this Certificate shall, in accordance with regulation E-5.3 of the Annex to the Convention, be accepted as valid until

Signed .....
(Signature of authorized official)

Place .....

Date .....

(Seal or stamp of the authority, as appropriate)

ENDORSEMENT WHERE THE RENEWAL SURVEY HAS BEEN
COMPLETED AND REGULATION E-5.4 APPLIES

The ship complies with the relevant provisions of the Convention and this Certificate shall, in accordance with regulation E-5.4 of the Annex to the Convention, be accepted as valid until ……

Signed .....
(Signature of authorized official)

Place .....

Date .....

(Seal or stamp of the authority, as appropriate)

*Delete as appropriate

ENDORSEMENT TO EXTEND THE VALIDITY OF THE CERTIFICATE UNTIL REACHING THE PORT OF SURVEY OR FOR A PERIOD OF GRACE WHERE REGULATION E-5.5 OR E-5.6 APPLIES

This Certificate shall, in accordance with regulation E-5.5 or E-5.6* of the Annex to the Convention, be accepted as valid until .....

Signed .....
(Signature of authorized official)

Place .....

Date .....

(Seal or stamp of the authority, as appropriate)

ENDORSEMENT FOR ADVANCEMENT OF ANNIVERSARY DATE WHERE REGULATION E-5.8 APPLIES

In accordance with regulation E-5.8 of the Annex to the Convention the new Anniversary date is ……

Signed .....
(Signature of authorized official)

Place .....

Date .....

(Seal or stamp of the authority, as appropriate)

In accordance with regulation E-5.8 of the Annex to the Convention the new Anniversary date is ……

Signed .....
(Signature of duly authorized official)

Place .....

Date .....

(Seal or stamp of the authority, as appropriate)

* Delete as appropriate

APPENDIX II

FORM OF BALLAST WATER RECORD BOOK

INTERNATIONAL CONVENTION FOR THE CONTROL AND MANAGEMENT OF SHIPS' BALLAST WATER AND SEDIMENTS

Period From: ..... To: .....

Name of Ship .....

IMO number .....

Gross tonnage .....

Flag .....

Total Ballast Water capacity (in cubic metres) .....

The ship is provided with a Ballast Water Management plan Diagram

of ship indicating ballast tanks:

1 Introduction

In accordance with regulation B-2 of the Annex to the International Convention for the Control and Management of Ships' Ballast Water and Sediments, a record is to be kept of each Ballast Water operation. This includes discharges at sea and to reception facilities.

2 Ballast Water and Ballast Water Management

"Ballast Water" means water with its suspended matter taken on board a ship to control trim, list, draught, stability, or stresses of a ship. Management of Ballast Water shall be in accordance with an approved Ballast Water Management plan and taking into account Guidelines[3] developed by the Organization.

3 Entries in the Ballast Water Record Book

Entries in the Ballast Water record book shall be made on each of the following occasions:

3.1 When Ballast Water is taken on board:

3 Refer to the Guidelines for the control and management of ships' ballast water to minimize the transfer of harmful aquatic organisms and pathogens adopted by the Organization by resolution A.868(20).

1) Date, time and location port or facility of uptake (port or lat/long), depth if outside port

2) Estimated volume of uptake in cubic metres

3) Signature of the officer in charge of the operation.

3.2 Whenever Ballast Water is circulated or treated for Ballast Water Management purposes:

1) Date and time of operation

2) Estimated volume circulated or treated (in cubic metres)

3) Whether conducted in accordance with the Ballast Water Management plan

4) Signature of the officer in charge of the operation

3.3 When Ballast Water is discharged into the sea:

1) Date, time and location port or facility of discharge (port or lat/long)

2) Estimated volume discharged in cubic metres plus remaining volume in cubic metres

3) Whether approved Ballast Water Management plan had been implemented prior to discharge

4) Signature of the officer in charge of the operation.

3.4 When Ballast Water is discharged to a reception facility:

1) Date, time, and location of uptake

2) Date, time, and location of discharge

3) Port or facility

4) Estimated volume discharged or taken up, in cubic metres

5) Whether approved Ballast Water Management plan had been implemented prior to discharge

6) Signature of officer in charge of the operation

3.5 Accidental or other exceptional uptake or discharges of Ballast Water:

1) Date and time of occurrence

2) Port or position of the ship at time of occurrence

3) Estimated volume of Ballast Water discharged

4) Circumstances of uptake, discharge, escape or loss, the reason therefore and general remarks.

5) Whether approved Ballast Water Management plan had been implemented prior to discharge

6) Signature of officer in charge of the operation

3.6 Additional operational procedure and general remarks

4 Volume of Ballast Water

The volume of Ballast Water onboard should be estimated in cubic metres. The Ballast Water record book contains many references to estimated volume of Ballast Water. It is recognized that the accuracy of estimating volumes of ballast is left to interpretation.

RECORD OF BALLAST WATER OPERATIONS

SAMPLE BALLAST WATER RECORD BOOK PAGE

Name of Ship: .....

Date	Item (number)	Record of operations/signature of officers in charge

Distinctive number or letters .....

Signature of master .....